

Assembly Bill No. 304

Passed the Assembly September 10, 2013

Chief Clerk of the Assembly

Passed the Senate September 9, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 14022, 14023, and 14024 of the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 304, Williams. Pesticides: toxic air contaminant: control measures.

(1) Existing law requires the Director of Pesticide Regulation, upon completion of an evaluation of a pesticide, to prepare a report on the health effects of any pesticide determined to be a toxic air contaminant that poses a present or potential hazard to human health due to airborne emission from its use, as specified. Existing law requires this report to be made available to the public, as specified. Existing law also requires the director to determine, in consultation with specified agencies, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant. Existing law defines toxic air contaminant to include those pesticides that have been identified as hazardous air pollutants pursuant to federal law.

This bill would require the director's written determination regarding control measures for each pesticide and any formal written comments made by consulting agencies be made available to the public. The bill, for each pesticide for which a risk assessment has been completed that has been identified by the director as a toxic air contaminant based on its listing as a federally identified hazardous air pollutant, would require the director, in consultation with the Office of Environmental Health Hazard Assessment, the State Air Resources Board, and the air pollution control or air quality management districts in the affected counties, to determine the need for and appropriate degree of control measures, as specified. The bill would require the director's written determination and any formal written comments made by consulting agencies in regard to control measures for these pesticides to be made available to the public.

(2) Existing law requires, for those pesticides for which a need for control measures has been determined, the director, in consultation with specified agencies, to develop control measures

designed to reduce emissions sufficiently so the source will not expose the public to the levels of exposure that may cause or contribute to significant adverse health effects. Existing law requires, after a public hearing, the director to adopt, by regulation, control measures, including application of the best practicable control techniques for those pesticides for which a need has been determined.

This bill would require the director to follow specified consultation procedures and would require the director, within 2 years of the determination of the need for control measures, as specified, to adopt control measures to protect human health. The bill, if the director is unable to adopt control measures to protect human health within 2 years of the determination of the need for control measures, would require the director to submit a specified report to the appropriate committees of the Legislature setting forth the reasons that requirement has not been met and to update that report, as specified. The bill would require, with respect to any pesticide for which a determination of the need for control measures was made before January 1, 2014, that the 2-year period described above commence on January 1, 2014.

(3) This bill also would make nonsubstantive changes to these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 14022 of the Food and Agricultural Code is amended to read:

14022. (a) In consultation with the Office of Environmental Health Hazard Assessment and the State Air Resources Board, the director shall evaluate the health effects of pesticides that may be or are emitted into the ambient air of California and that may be determined to be a toxic air contaminant that poses a present or potential hazard to human health. Upon request of the State Air Resources Board, the director shall include a pesticide for evaluation.

(b) The director shall complete the evaluation of a pesticide within 90 days after receiving the scientific data specified in subdivision (c) from the Office of Environmental Health Hazard Assessment and the State Air Resources Board. The director may extend the 90-day deadline for a period not to exceed 30 days if

the director transmits to the Assembly Committee on Rules and the Senate Committee on Rules, for transmittal to the appropriate standing, select, or joint committee of the Legislature, a statement of reasons for extension of the deadline.

(c) In conducting this evaluation, the director shall consider all available scientific data, including, but not limited to, relevant data provided by the Office of Environmental Health Hazard Assessment, the Occupational Safety and Health Division of the Department of Industrial Relations, international and federal health agencies, private industry, academic researchers, and public health and environmental organizations. At the request of the director, the State Air Resources Board shall document the level of airborne emissions and the Office of Environmental Health Hazard Assessment shall provide an assessment of related health effects of pesticides that may be determined to pose a present or potential hazard and each agency shall provide technical assistance to the department as it conducts its evaluation.

(d) The director may request, and any person shall provide, information on any substance that is or may be under evaluation and that is manufactured, distributed, or used by the person to whom the request is made, in order to carry out his or her responsibilities pursuant to this chapter. Any person providing information pursuant to this subdivision shall identify, at the request of the director, that portion of the information submitted to the department that is a trade secret and, upon the request of the director, shall provide documentation to support the claim of the trade secret. Information supplied that is a trade secret, as specified in Section 6254.7 of the Government Code, and that is so marked at the time of submission shall not be released to the public by the director, except in accordance with Section 1060 of the Evidence Code and Section 21160 of the Public Resources Code.

(e) The director shall give priority to the evaluation and regulation of substances based on factors related to the risk of harm to public health, amount or potential amount of emissions, manner of usage of the pesticide in California, persistence in the atmosphere, and ambient concentrations in the community.

SEC. 2. Section 14023 of the Food and Agricultural Code is amended to read:

14023. (a) Upon completion of the evaluation conducted pursuant to Section 14022, the director shall, in consultation and

with the participation of the Office of Environmental Health Hazard Assessment, prepare a report on the health effects of the pesticide that may be determined to be a toxic air contaminant that poses a present or potential hazard to human health due to airborne emission from its use. The report shall assess the availability and quality of data on health effects, including potency, mode of action, and other relevant biological factors, of the substance. The report shall also contain an estimate of the levels of exposure that may cause or contribute to adverse health effects and, in the case where there is no threshold of significant adverse health effects, the range of risk to humans, resulting from current or anticipated exposure. The report shall include the findings of the Office of Environmental Health Hazard Assessment. The report shall be made available to the public, subject to subdivision (d) of Section 14022.

(b) The report prepared pursuant to subdivision (a) shall be formally reviewed by the scientific review panel established according to Section 39670 of the Health and Safety Code. The director shall also make available the data deemed necessary to the scientific review panel, according to departmental procedures established to ensure confidentiality of proprietary information. The panel shall review, as appropriate, the scientific data on which the report is based, the scientific procedures and methods used to support the data, and the conclusions and assessments on which the report is based. The panel shall submit its written findings to the director within 45 days after receiving the report, but it may petition the director for an extension of the deadline, which may not exceed 15 working days.

(c) If the scientific review panel determines that the health effects report is seriously deficient, the report shall be returned to the director who shall revise and resubmit the report, within 30 days following receipt of the panel's determination, to the panel before development of emission control measures.

(d) Within 10 working days following receipt of the findings of the scientific review panel pursuant to subdivision (b), the director shall prepare a hearing notice and a proposed regulation that shall include the proposed determination as to whether a pesticide is a toxic air contaminant. After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the

director shall list, by regulation, pesticides determined to be toxic air contaminants.

(e) The director shall determine, in consultation with the Office of Environmental Health Hazard Assessment, the State Air Resources Board, and the air pollution control districts or air quality management districts in the affected counties, the need for and appropriate degree of control measures for each pesticide listed as a toxic air contaminant pursuant to subdivision (d). Any person may submit written information for consideration by the director in making determinations on control measures. The director's written determination and any formal written comments made by the consulting agencies shall be made available to the public.

(f) For each pesticide identified by the director as a toxic air contaminant based on its listing as a hazardous air pollutant pursuant to Section 7412 of Title 42 of the United States Code for which a risk assessment has been completed, the director, in consultation with the Office of Environmental Health Hazard Assessment, the State Air Resources Board, and the air pollution control or air quality management districts in the affected counties, shall determine the need for and appropriate degree of control measures. Any person may submit written information for consideration by the director in making determinations on control measures. The director's written determination and any formal written comments made by the consulting agencies shall be made available to the public.

SEC. 3. Section 14024 of the Food and Agricultural Code is amended to read:

14024. (a) For those pesticides for which a need for control measures has been determined pursuant to subdivision (e) or (f) of Section 14023 and pursuant to provisions of this code, the director, in consultation with the agricultural commissioners, air pollution control districts, and air quality management districts in the affected counties, shall develop control measures designed to reduce emissions sufficiently so that the source will not expose the public to the levels of exposure that may cause or contribute to significant adverse health effects. If no demonstrable safe level or threshold of significant adverse health effects has been established by the director, the control measures shall be designed to adequately prevent an endangerment of public health through the application of best practicable control techniques.

(b) Best practicable control techniques may include, but are not limited to, the following:

- (1) Label amendments.
- (2) Applicator training.
- (3) Restrictions on use patterns or locations.
- (4) Changes in application procedures.
- (5) Reclassification as a restricted material.
- (6) Cancellation.

(c) (1) The director shall follow the consultation procedures set forth in subdivision (a) and, within two years of the determination of the need for control measures pursuant to subdivision (e) or (f) of Section 14023, shall adopt control measures to protect human health.

(2) (A) If the director is unable to adopt control measures to protect human health within two years of the determination of the need for control measures pursuant to paragraph (1), the director shall submit a report to the appropriate committees of the Legislature setting forth the reasons this requirement has not been met.

(B) The director shall update the report submitted to the appropriate committees of the Legislature pursuant to subparagraph (A) every two years until the control measures have been adopted.

(C) If the registration for the use of a particular pesticide is rescinded or if the director determines there has been a dramatic decline in the use of a particular pesticide so that control measures for that particular pesticide are no longer needed, the director shall include this information in the report submitted to the appropriate committees of the Legislature pursuant to subparagraph (A) and the director's obligations pursuant to paragraph (1) shall be deemed to have been met.

(d) For purposes of this section, with respect to any pesticide for which a determination of the need for control measures was made before January 1, 2014, the two-year period described in subdivision (c) shall commence on January 1, 2014.

(e) After conducting a public hearing pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director shall adopt, by regulation, control measures, including application of the best practicable control techniques enumerated in subdivision (b) or any other best

applicable control technique, for those pesticides for which a need has been determined.

Approved _____, 2013

Governor